

### **REMARKS**

This Amendment, filed in reply to the Office Action dated March 28, 2008, is believed to be fully responsive to each point of rejection raised therein. In the present Amendment, Applicant amends claims 1, 4, 12 and 13. No new matter is added.

#### **I. Request for Continuing Examination**

The Applicant herein submits a Request for Continuing Examination under 37 CFR §1.114(c) along with the necessary fee and an amendment to the pending claims.

#### **II. Summary of the Office Action**

Claims 1-21 are all the claims pending in the application.

Claims 1-6, 12-15, and 21 remain rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by U.S. Pat. Pub. No. 2002/0159480 by Sekihata et al. (hereinafter "Sekihata").

Claims 7, 9-11, 16 and 18-20 remain rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Sekihata, in view of U.S. Pat. No. 6,496,519 to Russell et al. (hereinafter "Russell").

Claims 8 and 17 remain rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Sekihata, in view of Russell, and in further view of U.S. Pat. No. 6,195,332 to Tang.

#### **III. Cited Art Rejections**

Independent claims 1 and 12 have been amended to further define the claimed invention. With respect to **claim 1**, Applicant respectfully submits that Sekihata does not disclose, at least:

“wherein said uncounted overhead comprises overhead from a plurality of network data protocols”, as recited therein.

Applicant notes that Sekihata strictly mentions Ethernet data as the cause for the overhead that needs to be accounted for (*see* Sekihata at, *e.g.*, ¶ 0031). However, the claimed invention recites “configuring said rate regulator with said respective overhead criterion to charge for uncounted overhead, ... wherein said uncounted overhead comprises overhead from a plurality of network data protocols”. At least for this reason, Applicant respectfully submits that Sekihata does not anticipate amended claim 1.

Furthermore, Applicant respectfully submits that Sekihata does not disclose, at least: “whereby each data packet transmitted through said rate regulator is handled as a packet that has additional bytes as determined by said overhead criterion, thereby ensuring that said regulator bandwidth does not exceed said egress port bandwidth, ... wherein said each data packet enters said network through said ingress port and exits the network through said egress port”, as recited in amended claim 1.

In particular, the Examiner alleges that Sekihata’s buffer (31) and packet length counter (32) disclose the ingress and egress ports of the present invention (Office Action at page 2; *see* also Sekihata at 0014 and 0015). However, Applicant notes that Sekihata’s invention relates to bandwidth control at a particular ingress/egress point of a network based on the network’s line bandwidth. (Sekihata at ¶¶ 0009 and 0010). In particular, Sekihata bandwidth control is directed

to maintain the data rate entering the network from “spiking” above a contract data rate due to uncounted overhead (Sekihata at ¶ 0009).

However, Sekihata does not disclose, teach or suggest an overhead criterion such that “each data packet transmitted through said rate regulator is handled as a packet that has additional bytes as determined by said overhead criterion, thereby ensuring that said regulator bandwidth does not exceed said egress port bandwidth”, as recited in amended claim 1. In particular, Sekihata does not even consider the egress port bandwidth when performing bandwidth control. For this additional reason, Applicant respectfully submits that Sekihata does not anticipate amended claim 1.

Further still, Applicant respectfully submits that the additionally cited art of record does not remedy Sekihata’s deficiencies. In particular, the Examiner refers to Russell as allegedly disclosing several particularities of Ethernet and non-Ethernet networks (*see* Office Action - Claim Rejection Under 35 U.S.C. § 103; pages 7-14). The Examiner further refers to Wen-Tsung Tang as allegedly disclosing additional particularities of Ethernet-based networks.

However, even assuming, *arguendo*, that Russell and Wen-Tsung Tang disclose these elements of the present invention, Applicant respectfully submits that Sekihata, either alone or in combination with Russell and Wen-Tsung Tang, do not teach or suggest, “configuring said rate regulator with said respective overhead criterion to charge for uncounted overhead, ... wherein said uncounted overhead comprises overhead from a plurality of network data protocols”, as recited in amended claim 1.

Furthermore, Applicant respectfully submits that Sekihata, either alone or in combination with Russell and Wen-Tsung Tang, do not teach or suggest: “whereby each data packet transmitted through said rate regulator is handled as a packet that has additional bytes as determined by said overhead criterion, thereby ensuring that said regulator bandwidth does not exceed said egress port bandwidth, ... wherein said each data packet enters said network through said ingress port and exits the network through said egress port”, as recited in amended claim 1.

At least for these reasons, Applicant respectfully submits that the cited art of record does not teach or suggests all the elements of amended claim 1.

With respect to **claim 12**, Applicant respectfully submits that, for reasons analogous to those above regarding claim 1, claim 12 is patentable over the cited art of record.

With respect to **claims 2-11 and 13-21**, Applicant respectfully submits that these claims are patentable, at least by virtue of their respective dependencies on amended claims 1 and 12.

#### **IV. Conclusion**

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

AMENDMENT UNDER 37 C.F.R. § 1.114(c)  
Application No.: 10/828,333

Attorney Docket No.: Q92263

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,

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